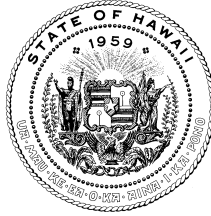


LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

STATE HISTORIC PRESERVATION DIVISION
601 KAMOKILA BOULEVARD, ROOM 555
KAPOLEI, HAWAII 96707

**HAWAII ISLAND BURIAL COUNCIL
MEETING MINUTES**

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR - LAND

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

DATE: THURSDAY, OCTOBER 19, 2006
TIME: 9:00 AM
PLACE: COUNTY OF HAWAII BUILDING
AUPUNI CONFERENCE ROOM
25 AUPUNI STREET
HILO, HAWAII

ATTENDANCE:

HIBC Members: Charles Young, Chair
Ulu Sherlock, Vice-Chair, Hilo
Leningrad Elarionoff, Kohala
Kaleo Kualii, Kona
Roy Helbush
Pele Hanoa, Ka'u
Dutchie Saffrey, Puna

Absent: Ku Kahakalau, Hamakua
Ron Dela Cruz, Kohala
Anna Cariaga, Ka'u
Cynthia Nazara, Kona
Jacqui Hoover

SHPD Staff: Keola Lindsey, SHPD History and Culture Branch
Vince Kanemoto, Deputy Attorney General

Guests:	Olivia Nenio	Bill Brooks
	Michelle Orita	Hanalei Fergestrom
	Ranchelle Nenio-Torres	Coral Rasmussen
	Tainen Castillo	Alan Haun
	Jobi Purdy	Keoni Choy
	Annie Purdy	Shirley Beyer
	Analani Alexander	Keoni Alvarez
	Shelly Stephens (Maka'ala Nakoa)	Aileen Alvarez
	Iwalani Arakaki	Nani Langridge
	Curtis Tyler	
	Hannah K. Springer	

I. OPENING REMARKS

HIBC Chair Charles Young (Young) called the meeting to order at 9:34 a.m.

Pele Hanoa (Hanoa) offered a pule.

The HIBC members, SHPD staff and the Deputy Attorney General introduced themselves to the audience.

II. APPROVAL OF HIBC MEETING MINUTES

A. APPROVAL OF THE SEPTEMBER 21, 2006 HIBC MEETING MINUTES

A motion was made to approve the September 21, 2006 HIBC meeting minutes. (Elarionoff/Hanoa)

Vote: All in Favor

B. APPROVAL OF THE JULY 20, 2006 HIBC MEETING MINUTES

Keola Lindsey (Lindsey) said at the September 2006 HIBC meeting, the HIBC recommended that the portion of the July 20, 2006 HIBC meeting minutes relative to the “Kaloko Heights” project be transcribed verbatim. The Department did not accept that recommendation. Council members do have the option of requesting specific revisions or details be added to the draft minutes to ensure relevant testimony is included.

Young asked if the recording of the meeting is available to the Council members.

Lindsey said yes.

Dutchie Saffrey (Saffrey) asked Lindsey if there is a specific item that has been omitted, can a Council member request that it be added to the minutes.

Lindsey said yes.

Saffrey said she noticed that statements from Curtis Tyler made referencing document numbers and conflicts of interest are not included. Those are very important and should be added.

A motion was made to defer approval of the July 20, 2006 HIBC meeting minutes to another meeting. (Sherlock/Saffrey)

Ulu Sherlock (Sherlock) asked if the HIBC can have the portion of the minutes transcribed verbatim based on the recording of the tapes Kaleo Kualī'i (Kualī'i) made.

Kualī'i said it can be and should be.

Sherlock asked if Kualī'i has the verbatim transcription is done, can the HIBC include it in the minutes or can the draft minutes be amended to include the verbatim transcription.

Lindsey said if the transcription of the minutes is not going to be done by staff, there may be required qualifications for the persons in the private sector doing the work. Generally, SHPD staff provide the transcribed minutes for the HIBC.

Young said the tapes can be distributed to the Council members, who can listen and then provide specific changes.

Kuali'i said this portion of the minutes pertains to item "D" of the meeting agenda, the "Kaloko Heights" project. Kuali'i said if that matter is going to be discussed, verbatim minutes should be provided and if not, Kuali'i questioned if the matter can be discussed.

Young said issues have been raised as to what exactly happened with the minutes. If the minutes are approved as is, it seems unacceptable. Young would like to hear the recording before making specific recommendations.

Vince Kanemoto (Kanemoto) referenced §13-300-28(a)(3), Hawai'i Administrative Rules (HAR) which requires the Department to record and transcribe meeting minutes.

Kuali'i said the issue is that there is information lacking in the minutes in order to make a good assessment.

Vote: All in Favor

III. BUSINESS

A. CULTURAL DESCENDANCY CLAIM

KAPALA'ALA'EA AHUPUA'A, NORTH KONA DISTRICT, HAWAI'I ISLAND TMK (3) 7-7-008:001, 099 AND 7-7-010:072

Information/Recommendation/Determination: Department recommendation to the Hawai'i Island Burial Council (HIBC) whether to recognize applicant as a cultural descendant to certain unidentified burials situated on the subject TMK parcel within Kapala'ala'ea Ahupua'a. HIBC determination whether to recognize the applicant as a cultural descendant.

Lindsey referred the Council to a October 5, 2006 staff memorandum recommending Ruby P. Keana'aina-McDonald be recognized as a cultural descendant to unidentified Native Hawaiian burials within SIHP Sites 24530, 24531 Features B, E, F, G, H,I and J, 24532 Features B and C and 24534 Features C,D,E,F,G,H and J which are situated on the subject tax map key parcels.

Kuali'i said it is interesting that McDonald is being recognized as a cultural descendant to specific burial sites. Kuali'i is not clear on that. At the September 2006 HIBC meeting several issues came up regarding TMK parcel or ahupua'a.

A motion was made to accept staff recommendation and recognize Ms. Ruby P. Keana'aina McDonald as a cultural descendant to the unidentified burials within SIHP Sites 24530, 24531 Features B,E,F,G,H,I and J, 24532 Features B and C and 24534 Features C,D,E,F,G,H and J

situated within Kapa'ala'ea Ahupua'a, North Kona District, Hawai'i Island TMK (3) 7-7-008:001, 099 and 7-7-010:072. (Sherlock/Saffrey)

Kuali'i said it is his understanding that when a cultural descendant to an ahupua'a, he did not realize it was specific to certain sites and or TMK parcels.

Elarionoff asked if a person qualifies as a cultural descendant to an ahupua'a why they are being restricted to certain burials within the ahupua'a.

Kanemoto said people make lineal or cultural claims to certain burials, not to land divisions. The only way the descendanty process functions is the identification of burials. A cultural descendant is defined within the law as having ancestors who once resided in or are buried in, or both within the same ahupua'a as certain burials.

Elarionoff said his objection is to the word "certain" because it isolates the claim.

Kanemoto if an individual is recognized by the Council as a cultural descendant to certain burial sites within an ahupua'a and more burials are found later within the ahupua'a, the individual does not have automatic standing. The law requires submitting a claim again.

Young said the State is making the recommendation in terms of interpreting the law and the Council is making recognitions in terms of interpreting cultural ancestry. The Council can accept the staff recommendation and expand on it and recognize the applicant to the entire ahupua'a.

Elarionoff said if more burials are found within Kapa'ala'ea, McDonald will not have to submit a claim because the HIBC has already recognized her to the entire ahupua'a.

Kanemoto said McDonald is a cultural descendant to the burials, not to the ahupua'a.

Young said as far as the State is concerned, she would have to submit another claim. The Council will already have recognized her to the entire ahupua'a. A precedent has been set through all the years the HIBC has been recognizing descendants in that there was an understanding the recognition was to the entire ahupua'a.

Puna Lerma (Lerma) said he is a past Chair of the HIBC and the HIBC has faced this issue before. If your family has iwi on an island, they have an interest on all the islands. It is ungrateful to the ali'i to narrow this down to TMK. There are many TMK within an ahupua'a.

Young asked during Lerma's time on the HIBC, was it his understanding cultural descendanty recognitions were to the ahupua'a.

Lerma said the claim should not be limited. Many families were awarded land in Kapala'ala'ea Ahupua'a.

Kuali'i quoted the definition of a cultural descendant within §13-300-2, HAR. Kuali'i said it is to the ahupua'a.

Young asked if the HIBC has to refer to TMK in the recognition motion.

Kanemoto said the recognition is to the certain sites listed in the staff memorandum.

Lerma said if referencing TMK parcels is a policy, it is not legal. Lerma asked where TMK are listed in the laws.

Kanemoto said the claim is to specific burials.

Kuali'i asked if when McDonald submitted the claim the specific sites were listed.

Lindsey said no.

Kanemoto said the HAR defines a cultural descendant to certain Native Hawaiian skeletal remains, not the ahupua'a.

Young said this was discussed at the last HIBC meeting and said the HIBC is trying to establish a baseline going forward so that there is consistency in the HIBC's thoughts, ideas and motions. The motions made at the September 2006 HIBC meeting accepted staff recommendation to certain burials but then expanded that to all burials within the ahupua'a.

Maka'ala Nakoa (Nakoa) testified that she has been doing research on royal patent lands. The HIBC has to look into bones found on lands that are bulldozed. Nakoa said she is concerned that the United States military occupies Pohakuloa and has heard that iwi have been disturbed there.

Young said what has happened to Hawai'i is wrong in international law and United States law. The HIBC is here to protect the iwi the best way they can. The HIBC is not going to make any decisions today that are going to hold any weight in terms of the constitutionality of the United States being in Hawai'i or the defacto Nation of Hawai'i. Young said he belongs to a sovereignty group and that is a personal choice. The HIBC wants advice on how the HIBC should take action on protecting burials.

The agenda item being discussed is a cultural descendanty recognition for a certain person to iwi in an ahupua'a.

Nakoa said the iwi of lineal descendants are protected. The bones need to stay where they are.

Keoni Choy (Choy) said they have vested rights to the entire ahupua'a. TMK are not in the picture.

Young said he would be in favor of accepting the staff recommendation and recommending that McDonald be recognized as a cultural descendant to the entire ahupua'a.

Kanemoto said the law does not permit recognition to the entire ahupua'a, it has to be to certain burials. Kanemoto said McDonald is connected to her ancestors that once resided in the ahupua'a, but the recognition before the council is the cultural descendanty recognition within the narrow definition of the rules. The recognition is to certain burials within the ahupua'a. The recognition is to certain Native Hawaiian remains over 50 years old, but does not limit any other issues related to the ahupua'a, which should be addressed in a different forum.

Young said we need to keep the cultural context, because the HIBC constantly is in conflict with laws that were written with a different cultural understanding. The staff recommendation does not

include the kind of wording that Young feels is appropriate for cultural descendanty to an entire ahupua'a.

Kanemoto said the HIBC cannot recognize McDonald as a cultural descendant to the entire ahupua'a.

Young said is speaking to the western context of the law and the HIBC is speaking to the cultural context.

Kanemoto said he is advising the HIBC that the law does not allow that.

Kale Gumapac (Gumapac) said he supports Young's position. The HIBC is supporting a cultural decision. Gumapac said the Attorney General is referencing laws that have been clouded. The question the HIBC members have to ask is whether this process is set up to intimidate the Hawaiian people from coming forward. Gumapac said the answer is yes, the process is designed to intimidate. Culturally, wherever we come from everyone within the ahupua'a had rights. TMK limit the claim and make the individuals come forward over and over again. The HIBC needs to step outside of the box to make the changes to the rules.

If the HIBC recognizes McDonald to the ahupua'a, it will force the State to change the rules. Gumapac said the HIBC should be making the rules because you are the representatives of the people. If the rules are wrong, change them.

Kanemoto said if the rule needs to be changed, the Department can work on the process to change them.

Gumapac said the HIBC cannot be placed in a glass bowl, because the HIBC loses and the people lose.

Kuali'i said in September, the HIBC recognized individuals to the ahupua'a in two cases.

Gumapac said the HIBC has more authority than they realize and need to use it.

Saffrey said the Council members do not have time to get together to talk and become one mind because after the meetings, that is it, there are laws that prohibit Council members from conferring with each other. Saffrey said the HIBC needs to meet collectively outside of the meeting so these issues can be discussed. Saffrey agrees that the HIBC is here for the people. It is heartwarming to hear the people speak. The HIBC needs to meet separate from the third Thursday to define these things.

Curtis Tyler (Tyler) said the HIBC has more authority than is being exercising and has pointed out where that authority is for the protection of the iwi kupuna. Tyler recommended recognizing McDonald to Kapala'ala'ea ahupua'a including but not limited to certain burials. The AG is speaking from the palapala and the people are speaking from the na'au in terms of tradition and practice. If the rules need to be amended at some point that is fine. Tyler said in his opinion, the HIBC can recognize individuals to the entire ahupua'a.

Sherlock withdrew the motion.

Hanoa said the Hawaiian thing to do is recognize McDonald as a cultural descendant to the ahupua'a from mauka to makai.

A motion was made to recognize Ruby P. Keana'aina-McDonald as a cultural descendant to Kapala'ala'ea Ahupua'a to include but not be limited to the burials within SIHP Sites 24530, 24531 Features B,E,F,G,H,I and J, 24532 Features B and C and 24534 Features C,D,E,F,G,H and J located on TMK (3) 7-7-008:001,099 and 7-7-010:072. (Young/Sherlock)

Vote: All in Favor

A motion was made to close agenda item III.A. (Sherlock/Hanoa)

Vote: All in Favor

B. BURIAL TREATMENT PLAN

PAHOEHOE 2ND AHUPUA'A, NORTH KONA DISTRICT, HAWAI'I ISLAND TMK (3) 7-7-008:021

Information/Recommendation/Determination: Discussion of the information contained within the burial treatment plan. HIBC determination to preserve in place or relocate the burials identified within the burial treatment plan. HIBC recommendations to the Department on short and long term preservation and protective measures for the burials sites identified within the burial treatment plan.

Alan Haun (Haun) of Haun and Associates gave an overview of the burial treatment plan (plan). Three burials were identified during an inventory survey. The proposal is preservation in place. The property will be developed in accordance with its current zoning. The plan was presented in September to the HIBC and several revisions to the plan and development graphics were requested. A revised plan was sent to the SHPD for distribution to the HIBC.

Young asked if this is the first time the matter is on the agenda for a determination.

Lindsey said yes.

Young said in September, the development plans were conceptual and still subject to change and that is still the case.

Tyler said he is a recognized lineal descendant to burials in Pahoehoe. Tyler thanked Haun and Bill Brooks (Brooks) for providing the information related to this proposed project including the preliminary and revised plan.

Tyler referred to page 4 of the revised plan dated October 2006. Tyler is concerned that part of Site 6438 is within the Ali'i Highway corridor. Tyler is not certain if the corridor has been deeded to the County. Tyler is concerned that there are features to this burial that are outside of the "project area" but inside of the property. This needs to be addressed and the HIBC needs to recognize the pattern related to the Ali'i Highway project which will lead to more problems with burials as time progresses.

Tyler referred to page 11 of the plan. In September Tyler said Grant 1927 extended beyond the Pa Kuakini and asked for a correction. Tyler said he was mistaken, indeed Grant 1749 extends above

the Pa Kuakini. Tyler said Haun was correct, and Tyler and Haun discussed the matter over the telephone.

Tyler referred to page 12 of the plan. Tyler appreciates that alien plant species will be removed and native landscaping used. Tyler thanked Haun for including that new language.

Tyler recommended that language be added to the plan stating that the temporary buffer fencing remain in place at all times until the approved permanent buffer is in place. Tyler said he has received reports in the past the bulldozers have been working near sites and there is no buffer zone. There is a situation like that on Ali'i Drive in Holualoa.

Tyler requested that language be added to the plan stating the permanent buffer be established and approved no later than any request for or commencement of any land alteration activities on the subject property.

Tyler referred to page 13 of the plan. Tyler thanked Haun for adding language stating that the SHPD and the recognized descendants will be allowed to review the covenant language and be provided with copies of the recorded covenant. Tyler said language should be added that copies of the recorded document should be provided within 60 days of the recordation.

Tyler said the preservation measures within the plan should be implemented as soon as feasible and prior to any requests for or commencement of any ground alteration activities on the property.

Elarionoff asked Haun about the recommendations and suggestions Tyler made.

Haun said he does not have a problem with them and will discuss them with his client.

Hanalei Fergestrom (Fergestrom) of the Temple of Lono said he is not familiar with this specific plan or the burials, but he is familiar with the area and the Temple of Lono has an interest in the area. Fergestrom reserved comment until the Temple of Lono has the opportunity to review the plan. There are many iwi in the area that have not been discovered.

Young said the HIBC has a statutory timeframe that has started today. The HIBC has 45 days to make a determination.

A motion was made to defer agenda item III.B. (Saffrey/Sherlock)

Vote: All in Favor

A motion was made to close agenda item III.B.

Vote: All in Favor

C. BURIAL TREATMENT PLAN KAULANA, AWALUA, OHIKI, PU'UKALA AND KAU AHUPUA'A

NORTH KONA DISTRICT, HAWAI'I ISLAND TMK (3) 7-2-007:001

Information/Recommendation/Determination: Discussion of the information contained within the burial treatment plan. HIBC determination to preserve in place or relocate the burials identified within the burial treatment plan. HIBC recommendations to the Department on short and long term preservation and protective measures for the burials sites identified within the burial treatment plan.

Haun provided an overview of the plan. Three burials were identified during an inventory survey. The proposal is preservation in place. In September several revisions to the plan and development graphics were requested. A revised plan was sent to the SHPD for distribution to the HIBC. One HIBC member requested a copy of the inventory survey which was sent to the SHPD for distribution.

Young said the develop will be providing the infrastructure and not developing the residential lots. The burial easement will be a common area and not within any of the lots. Young asked who will be responsible for the common area.

Tom Yamamoto (Yamamoto) of Lynch Development, Hawai'i introduced himself to the Council. The Homeowners Association will be responsible for the common area and access will be proved.

Elarionoff said the plan refers to the first archaeological work identifying 11 sites and Haun's work identified 34 sites. Elarionoff asked Haun to explain the discrepancy.

Haun said the original work was not an inventory survey, it was a reconnaissance survey. An inventory survey is 100 percent coverage.

Kuali'i said at the last meeting monitoring was discussed.

Haun said he discussed this matter with Lindsey. Typically the requirement for monitoring comes out of recommendations within the inventory survey. In the case of this report, the SHPD did not require monitoring.

Lindsey said the landowner can also voluntarily have monitors present.

Kuali'i said Yamamoto should consider monitors during their portion of the construction.

Yamamoto said he will.

Young said the plan will cover the entire project and the individual lot owners will not have to prepare burial treatment plans.

Saffrey said there could be grubbing and burials could be discovered. Saffrey asked what happens then.

Lindsey said the process for inadvertent discoveries required by the Hawai'i Revised Statutes is implemented.

Young said the project is in phases. If there are inadvertents during phase I, the plan and the inventory survey can be revisited.

Lindsey said in that scenario, monitoring can also be discussed in response to those specific issues.

Hannah Kihalani Springer (Springer) introduced herself to the Council. Springer said there has been a free exchange of information between the families and the developer. The families have been given the revised plan and stand by it. Springer appreciated the discussion on monitoring and previous speaker's testimony.

Springer said there are families of the kaha lands that are always duly consulted on matters and are not formally recognized or acknowledged by the State of Hawai'i. Springer asked what guidance the HIBC may have in terms of applying for lineal or cultural descendant recognition.

Young said the families are recognized in the kaha land and the connection is well known. The State has the descendant recognition process.

Lindsey said the plan has been distributed to the families. A potential concern is that the plan specifically indicates access will be provided to lineal and cultural descendants recognized by the HIBC. Lindsey said Haun and Yamamoto are well aware of the families' interests and connection to these lands, but as time moves forward, the plan may become a guiding document for the entities that assume control of the project and they may point to the verbatim statements within the plan like the ones that dictate access. Either that portion of the plan needs to be revised or the families need to apply for recognition.

Elarionoff recommended the families apply.

Kuali'i agreed that the people need to come forward.

Saffrey said we need to follow the laws that are in place.

Young said this is the first time this matter is on the agenda for a determination and the statutory clock started today.

A motion was made to defer agenda item III.C. (Saffrey/Sherlock)

Vote: All in Favor

A motion was made to close agenda item III.C. (Sherlock/Hanoa)

Vote: All in Favor

**D. FINAL PRESERVATION PLAN FOR BURIAL SITES WITHIN THE KALOKO HEIGHTS PROJECT
KALOKO AND KOHANAIKI AHUPUA'A, NORTH KONA DISTRICT, HAWAII ISLAND
TMK (3) 7-3-009:032**

Information/Recommendation: Discussion of the status of a final preservation plan for burials within the project area. Discussion of HIBC recommendations made at the March, April, May and June 2006 HIBC meetings relative to the identification and protection of Native Hawaiian burials within the project area and additional motions made by the HIBC at the July and September 2006 HIBC meetings.

Lindsey referred the Council to a September 18, 2006 letter from the SHPD to the developer. The letter details the SHPD's requests for revisions to the final preservation plan for the burial sites.

Lindsey said staff has conducted a site inspection to the project area. Fencing is up around the preservation sites including the burials and the data recovery sites which was a condition of the SHPD's review of the County Grubbing permit for this project. Fencing is also up on either side of the "roads to the sea" which has been breached once to allow machinery from one side of the project to the other. Approximately 100 acres of the project area has been grubbed. The grubbing began in late August and concluded in early October. One machine did the work and a monitor was present. No human iwi have been identified during the monitoring of the grubbing activity. Once data recovery is completed, the next phase of the grubbing will begin.

Young asked if the topographical information has been generated.

Lindsey said he did not know.

Kuali'i said the requested verbatim minutes from the portion of the July HIBC meeting where this matter was discussed contains information that is crucial to this project. During the July meeting, a bulldozer was on site while buffers were being discussed.

Lindsey said grubbing was authorized to establish buffers around sites. A previous permit for a road within the project was approved as was a permit for a well related to, but not within the project area.

Kuali'i said the HIBC is accustomed to reading and commenting on burial treatment plans as they go along. This goes back to May when recommendations were made and only one of them were accepted. Somewhere along the line Kaloko Heights made it through the process and the HIBC finds out that the buffers for burial sites were hidden in the preservation plan for non-burial sites. The HIBC did not really get a chance to discuss this. The HIBC was meeting in July and there was a bulldozer on site and approved buffers.

Lindsey said he is not sure what grubbing activity Kuali'i is referring to.

Kuali'i said the grubbing for the buffers. The preservation plan and buffers had already been approved and that is very frustrating and the July verbatim minutes will state all of this. Kuali'i felt that the HIBC had been deceived and he will make sure it never happens again. It is unfortunate that the HIBC did not have the opportunity to discuss this. The SHPD made a decision and Kuali'i did not see it.

Buffers were put someplace they are normally not, in the preservation plan. When the HIBC determined preservation in place, the buffers were already approved.

Young said the feeling is that the communication process broke down. A decision was made, which may have been made by the proper authority, but the HIBC was not consulted and there may have been recommendations from the HIBC which were precluded. The communication process needs to be improved.

Lindsey said the September 18th letter requests certain revisions and the Department is in receipt of a revised plan which incorporates those requests. The HIBC can be given copies of the revised plan.

Kuali'i asked if it was too late to make changes to buffers.

Lindsey said the Department did not accept the HIBC's recommendations from June regarding larger buffers.

Kuali'i said that is the issue. While the HIBC was discussing this matter in July, a bulldozer was establishing buffers that the HIBC did not approve of or even know of. This is unprecedented and is an embarrassment to the Administration, the HIBC and the kupuna and is unacceptable.

Saffrey said it is very frustrating to site here and make recommendations on behalf of the people only to find the recommendations are squelched without the HIBC even knowing it. That happened at the July meeting. A letter was written which detailed decisions regarding not accepting the recommendations and the HIBC was not even provided copies. Saffrey said this is a disservice to the Council members and the public because the SHPD is making decisions without even listening to the voices of the people. If the HIBC is just a carrot and a pretense to be here to hear the people and higher positions are not even going to listen and the bulldozers are going to go, it is of great concern. The HIBC need the voice we should have. It is not fair to the HIBC to come month after month if our voices are not going to be heard.

Lindsey said the Department always considers the recommendations the HIBC and the families make. In this particular case not all of the recommendations were accepted. In previous cases, Lindsey feels the majority of HIBC recommendations are accepted.

Saffrey said in previous cases yes, but in July, Melanie Chinen told the HIBC at the meeting and did not even provides the letter which stated the recommendations were not accepted.

Lindsey said not all of the recommendations were accepted, but certain ones were.

Elarionoff asked Kanemoto what the HIBC's options are.

Kanemoto said the HIBC is the conduit for the people's concerns regarding burial matters to State Government. The HIBC provides recommendations to the Department based on input received from the public. The Department does have the final say on certain issues. The HIBC makes determination on preservation in place or relocation and recognition of descendants.

Elarionoff said specifically, what can the HIBC do about a decision being made while the HIBC was discussing the issue.

Kanemoto said other than the determinative powers, the HIBC is advisory to the Department.

Elarionoff said advising should be before not after the fact.

Kanemoto said after the HIBC makes a preservation in place determination, the Department has 90 days to approve a mitigation plan. Kanemoto said he is not familiar with the issues Kuali'i is referring to.

Kuali'i said when the HIBC made the determination to preserve in place, it was looking towards discussing the details of preservation in place at future meetings. In this case it was a shell game and the buffers were hidden in the non-burial preservation plan. The project was discussed for five months and that is why those minutes are so important. The developer stated that the reason he did not put it in the plans that were before the HIBC was that he was going to make recommendations, go back and put it in the plan and show it to the HIBC and discuss it. That was not the process, he said he wouldn't place it in there because he was waiting for the family members to talk and after discussing it with the family members they did not want to make changes now because they waited for after.

There were family members present at those meetings and Kuali'i asked them if they were contacted by the developer and they said no. Then he went to talk to them. That day in July as Kuali'i was driving to the meeting, there was a bulldozer on site establishing the 20 foot buffers.

Lindsey said it is the temporary 50 foot buffer that was established.

Kanemoto said he does not know how the disconnect happened. The HIBC should continue making recommendations to the Department.

Kuali'i said the HIBC is here, but is not being heard. Kuali'i asked if the HIBC is being used as puppets. In this particular case, the HIBC was and it is an embarrassment. It is documented, Kuali'i said he has it right here, there are normally two plans, a preservation and burial treatment plans and the burial buffers were in the preservation plan. The public needs to look at the minutes to try and understand what is going on.

Kuali'i said he requested Melanie Chinen be at this meeting because she is the only one qualified to answer these questions.

Kanemoto asked if the burial treatment plan is a small component of the larger preservation plan.

Lindsey said generally they are separate documents.

Young said it needs to be identified why it happened and then how to ensure it does not happen again. This relates to the communication issue. Young said the matter was discussed at a August 30th meeting in Honolulu where Young expressed frustration to Chinen that the decision was in Chinen's capacity to make but the communication should have occurred before the decision was made.

Kuali'i said there were also other recommendations made by the Chair and others and nothing ever came back from the SHPD. It seems like there was a process that the HIBC was not included. The SHPD says they listen to all the requests, but apparently they don't.

Kanemoto said it is up to the Department whether to accept the recommendations. The HIBC Chair can communicate with anyone within the Department to let the Council's position known.

Saffrey said it bothers her that HIBC members cannot confer outside of the meeting. It feels like their hands are tied.

Saffrey said Tyler brought forward letter that indicate a conflict of interest. It was brought up, but is certainly not in the minutes. So if the minutes are there to enable the HIBC to recall these things and are being left out by choice, obviously. Saffrey said their hands are tied and they are puppets.

Lindsey denied that things were left out of the July HIBC minutes by choice and they were not changed between the Hawai'i Island office and the Kapolei office.

Kanemoto said any Council member can contact the Department.

Saffrey said the power is in the numbers that sit here. If we are all in agreement, come up with a suggestion on how we can say these people who are here, this is what they want and the HIBC support them.

Kanemoto said it should be done through a formal motion.

Saffrey said the HIBC always runs out of time. There are things that prevent the HIBC from cleaning the house that needs to be cleaned.

Kanemoto said there can be more than one HIBC meeting a month.

Gumapac said it is unfortunate that these issues come up in these meetings because it confirms the po'e kanaka suspicions that this process is shibai. If there is only one staff person on this island, then the State is not concerned about what is happening on this island. Gumapac asked why are we proceeding with the rubberstamp process when the State ignores the recommendations of the HIBC.

The HIBC needs to agree to a moratorium on all development because then the State will listen. Don't keep playing the shell game they are playing with the HIBC. Gumapac said they are not here to be ignored, they are here to malama 'aina and so is the HIBC. The HIBC has the power and needs to recognize.

Young said he can never recall the State has taken under its own advisement and made decisions without consulting the HIBC. To categorize it as the State never listens to the recommendations is not true. Young said the fact that there are other things going on that the HIBC is not aware of, privy to or responsible for may be true. Every time there is a HIBC meeting, the process is improved. A moratorium on development may be the last thing. If people do not attend the meetings, the process cannot be improved.

Gumapac said the people are willing and ready to help.

Nakoa said Hawaiians are entitled to having their own historic preservation officer.

Tyler said that the contractor doing the grubbing within the "Kaloko Heights" project area is very concerned and there are very large buffers set up that are not described in the plans. Tyler said the trail is blatantly missing from the preservation plan. How can there be a homestead and burials without a trail. The SHPD Administrator overrode the island archaeologists and allowed non-preservation of the trail. This destroys the cultural landscape. The plan sets up the heiau for

visitors and interpretation. Tyler said the heiau is a scared place and questioned why it is not still a sacred place. When we talk about archaeology, we are talking about things that are dead. Cultural resources are living, and there are more developers and po'e kanaka coming forward with this. You do not make a park out of a heiau.

Tyler said the preservation plan is lacking. It is certainly unusual. Tyler referred to page 5 of the preservation plan.

Young said we are passed that point and is not sure if Tyler's testimony is going to be constructive in terms of the HIBC making a decision.

Tyler asked if the HIBC cannot make anymore recommendations.

Sherlock said the HIBC has been shut down already.

Kuali'i said that Lindsey said the HIBC cannot make anymore recommendations.

Young said the plans have been accepted and the project is in the construction phase.

Lindsey said the HIBC has the statutory authority to make recommendations on any matter related to native Hawaiian Burials. Lindsey said his comment to Kuali'i was specific to buffers which have already been approved.

Tyler said consultation with OHA is required for the trail. This did not happen and this is a public trust asset and it is appalling that it will not be preserved.

Tyler recalled that at the September meeting, the Governor's representative, SHPD Administrator and Deputy Attorney General abruptly left the meeting and the HIBC members were quite upset. The audience was quite upset. Tyler said Chinen's presence was requested at this meeting.

Lindsey said Chinen is at a previously scheduled conference in the continental United States.

Tyler said the grubbing contractor and Paul Kay of Stanford Carr Development have made efforts to embrace the families and interested parties to come and see what is going on there. Opportunities have been provided and Tyler wanted to commend them for that. Efforts have been made to preserve the large native trees on the property. Those which cannot be preserved will be collected or transplanted. The fact that two burials are in the preservation plan and the rest are not is very strange.

Tyler said he is concerned that Hawai'i Island has no SHPD Archaeologist. Tyler said he has heard that people from other islands will be brought in from time to time. This is not pono because these people are not familiar with Hawai'i Island. The HIBC needs to ensure the SHPD office is properly staffed. Tyler said the staffing issue is clearly affecting the HIBC and the community. Tyler said he hopes there will not be rubber stamp approvals.

Kuali'i asked what is happening to the permits that are coming in.

Lindsey said they are being held. The Division is working on filling the positions or looking towards using existing staff to conduct the necessary reviews.

Kuali'i said he shares Tyler's concerns about bringing in people from the outside and rubber stamp approvals. Things could pass through without the HIBC being involved in the process. This goes back to the HIBC being excluded from the process and a serious break down.

Young said at the meeting in Honolulu on August 30th, the staffing issue was discussed. There are not a lot of qualified applicants.

Choy asked how the burial treatment plan was approved with a missing component. The buffers were not in the plan. Choy said crooks are being rewarded.

Choy asked who ordered the data recovery.

Lindsey said the State.

Choy said the State ordered the destruction of our property. Choy asked Lindsey if he knew data recovery required permanent destruction.

Lindsey said he does.

Choy asked who orders the permanent destruction of our property.

Lindsey said he would not use the word order, but the SHPD allows it to happen as it is a process established within the HAR.

Fergestrom requested the HIBC meeting minutes from the April, May, June and July and September meetings and a copy of the HAR. Fergestrom said he is willing to help and is trying to get a handle on the issues. Fergestrom is very concerned about data recovery. When you talk about destroying a heiau or allowing access to it, you are violating Fergestrom's rights. Fergestrom's religion extends to before any government was here, Hawaiian or American. Any collaboration to destroy cultural properties will be met with strong legal challenge.

Lindsey said the approved minutes and HAR are available on the SHPD website.

Kuali'i said the minutes are not verbatim and suggested listening to the recorded tapes of the meetings.

Choy said the HIBC should rescind the determination on this agenda item until the missing components of the burial treatment plan are addressed.

A motion was made to close agenda item III.D. (Hanoa/Sherlock)

Vote: All in favor

The HIBC meeting was recessed for lunch at 12:37 p.m.

The HIBC meeting was reconvened at 1:24 p.m.

A motion was made to move agenda item III.H. before agenda item III.G. (Hanoa/Sherlock)

Vote: All in Favor

E. BURIAL TREATMENT PLAN FOR SITE 50-10-20-19415
PU'ULANI RANCH SUBDIVISION PHASE II
PU'UANAHULU AHUPUA'A, NORTH KONA DISTRICT, HAWAII ISLAND
TMK (3) 7-1-006:128

Information/Recommendation: Informational presentation of the burial treatment plan by International Archaeological Research Institute, Inc. Discussion of the information and details within the burial treatment plan. HIBC recommendations to the Department and the applicant on the information and details within the burial treatment plan.

Coral Rasmussen (Rasmussen) of International Archaeological Research Institute, Inc. gave an overview of the burial treatment plan. One historical burial was identified during archaeological work. Informant testimony indicated there may have been additional burials, so after receiving permission from the SHPD, the top of Puu o Kaiwi was tested. Additional archaeological features were identified, but no more burials. The proposal is preservation in place for the one identified burial with a 20 foot permanent buffer.

Rasmussen said she consulted with Shirley-Ann Keakealani. Keakealani said her main concern was that this burial is treated with respect.

Kuali'i asked if other descendants from Pu'uanahulu have been consulted.

Rasmussen said yes, but Keakealani has been identified as the one to talk to. Rasmussen said she was hoping the families could have attended today's meeting. Rasmussen said the landowner plans to subdivide the large lot into three lots. The subdivision has been put on hold until the burial treatment plan is approved.

Roy Helbush (Helbush) asked how big the parcel is.

Rasmussen said three acres.

Young said according to the maps in the plan, it is closer to six acres. The burial is on the proposed subdivided lot "B".

Elarionoff questioned the previous archaeology inventory work in Puulani Ranch.

Rasmusen said the 1997 inventory was not accepted by the SHPD. IARII addressed the unresolved issues from the 1997 inventory in a 2002 inventory which the SHPD has accepted.

Elarionoff questioned Rasmussen on the testing on Puu o Kaiwi.

Rasmussen said 858 linear meters of trench were excavated.

Elarionoff asked if it is acceptable to use or reference portions of the 1997 inventory in the IARII 2002 inventory.

Rasmussen said the IARII 2002 inventory addressed the issues from the 1997 inventory which resulted in the SHPD not accepting the 1997 inventory. The information from the 1997 inventory

which was accurate and acceptable, like the identification of sites and assigning of site numbers was used again by IARII in 2002.

Elarionoff said the HIBC was copied a July 15, 2006 letter from Newell Bohnett (Bohnett) which questioned the information previous archaeologists had received. Elarionoff questioned whether Bohnett felt the previous archaeological work may not be adequate.

Rasmussen said they consulted with the families on the identification of burial sites. The information in the 2002 inventory is not based on the 1997 inventory, they tried to make it a better report.

Elarionoff said the 1997 inventory identified a burial which IARII determined was not a burial. Elarionoff asked how it was determined the site was not a burial.

Rasmussen said through data recovery. The site was excavated down to the bedrock.

Elarionoff referred to page 11 of the plan which discusses informant testimony identifying multiple burials on Puu o Kaiwi. Elarionoff said the testing which did not identify any burials seems to contradict the informant testimony.

Rasmussen said the entire top of Puu o Kaiwi was tested and only one burial was identified. A rock with "Mary" inscribed on it appears to be associated with the one historic burial.

Young said the landowner has not received subdivision approval. The plan shows the proposed subdivision of the parcel. Young asked if there is a possibility the proposed subdivision is going to change after the plan is approved.

Rasmussen said she does not think there is going to be any changes, but can check with the landowner.

Young said if there are any changes to the proposed subdivision, it should be brought back before the HIBC. When the house is going to be built on the site, there should be consultation with the descendants.

Rasmussen agreed.

Elarionoff referred to page 22 of the plan which discussed archaeological monitoring and asked what qualifies a person to be an archaeological monitor.

Rasmussen said an archaeological monitor is a trained archaeologist.

Lindsey said an archaeological monitor is qualified when a permitted archaeologist is overseeing them. The SHPD issues permits to private archaeological firms. The head of that firm is charged with overseeing those conducting work for the firm.

Elarionoff said the plan does not address the failure to adhere to the conditions and proposals in the plan.

Kanemoto said the knowing violation of a mitigation plan is considered a civil and administrative violation.

Tyler said he noticed that there is no 'ohana from Pu'u'anahulu at the meeting. Tyler said he does not presume to represent those families, but has listened for over 13 years about the pilikia in the Pu'ulani Ranch Subdivision. Tyler appreciated Elarionoff's earlier comments. Tyler urged Rasmussen to ensure that there are no additional burials on Pu'u o Kaiwi. Tyler said Rasmussen should meet with the families on their 'aina.

Kuali'i suggested Rasmussen get all the families together.

Rasmussen said she tried to talk to any of the family members that could talk.

Kuali'i said just the meaning of Pu'u o Kaiwi indicates people should be aware and alert. Kuali'i said the families should be at the next meeting.

A motion was made to close agenda item III.E. (Elarionoff/Saffrey)

Vote: All in Favor

**F. FINAL PRESERVATION PLAN FOR FEATURE E OF SIHP SITE 1915
O'OMA 2ND AHUPUA'A, NORTH KONA DISTRICT, HAWAII ISLAND
TMK (3) 7-3-009:023**

Information/Recommendation: Discussion of the Department's determination to concur with the applicant's proposal and preserve the subject burial site in place. Discussion of the 45-day statutory timeframe for the HIBC to render a determination expiring prior to the September 2006 HIBC meeting. HIBC recommendations to the Department relative to the short and long term protection of the burial site.

Lindsey referred the Council to a SHPD letter dated September 11, 2006. The matter was placed on the HIBC agenda at the July 20, 2006 meeting for the first time and deferred. The August HIBC meeting was cancelled and the statutory timeframe for a determination expired prior to the September HIBC meeting. The landowner's representative refused a time extension. The department concurred with the proposal to preserve the burial in place. The Department has 90 days to approve a final preservation plan for the burial and the HIBC can provide comments and recommendations to the preservation details of the final plan.

Young asked about the buffers around the burial.

Lindsey said the burial is located within a larger preserve and no temporary buffer was proposed. The buffers around the burial range from 165 feet to 690 feet because the site is situated in a larger preserve.

Young said there will be no construction or development in the preserve. The parcel above will be leased by the Natural Energy Lab and it is unclear what will be developed on the parcel.

Lindsey said there are cultural descendants recognized to the subject burial.

Kuali'i said the buffers appear adequate and the proposal is that there will be no development within the preservation area. The road depicted on the map in the plan which crosses over from

O'oma 2nd into Kohanaiki will be closed when the "Shores at Kohanaiki" opens their public access road because the current road crosses in between two sites.

Lindsey said the 90 day statutory timeframe for the approval of the final preservation plan will expire after the November HIBC meeting.

Kuali'i requested that the archaeological consultant, Bob Rechtman be at the next meeting to discuss the matter.

A motion was made to close agenda item III.F. (Hanoa/Kuali'i)

Vote: All in Favor

H. PRESENTATION BY HANK FERGESTROM AND THE TEMPLE OF LONO REGARDING CONCERNS ON "UNCLAIMED IWI"

Information/Recommendation: Informational presentation by the Temple of Lono regarding "unclaimed iwi", which are native Hawaiian burial sites where there are no recognized lineal and/or cultural descendants. HIBC recommendations to the Department on how the Temple of Lono's concerns should be addressed.

Hank Fergestrom (Fergestrom) said he has brought this issue before the HIBC informally in the past. Fergestrom is with the Temple of Lono and is a haumana of Sam Lono, a recognized kahuna. It is apparent that the care for kupuna iwi is not being done completely. There are many iwi on boxes on shelves and that is not pono. This needs to be addressed.

Fergestrom said it is revealed that of the major Hawaiian gods, only Lono was given a task which is to feed the people in all manners, not just food. With life there is death and the caring for those who have passed is also in the purview of the Temple of Lono.

There are iwi that have sat in boxes for years because nobody has been able to make a lineal or cultural claim. Religion falls within culture, but Fergestrom feels religion has a standing on its own. It is a matter that needs to be brought to the attention of the State and Federal Government for an expansion of the parameters of NAGPRA.

The kupuna iwi that are being uncovered from unmarked graves are obviously from an ancient time. The State has created a difficult situation. Culturally it is inappropriate to reveal the locations of kupuna iwi, yet at the same time the State is saying either we do or the iwi will be dug up. Regardless of what is revealed, the iwi are being dug up anyway.

The iwi that have been disturbed need to be returned. A process needs to be developed and utilized to allow that to happen right away. Fergestrom said that families have the right to protect their own iwi, but if there are disputed iwi, there needs to be a temporary spot closer to the 'aina rather than in a box on a shelf. The iwi from Mokapu, Wal-Mart and Hokuli'a are still out and that is very troubling and unsettling. It is a mark of a civilized society that the graves are cared for.

The State has forced the people to talk about TMK parcels. Hawaiians did not talk about TMKs, they talked about ahupua'a. The Hawaiian people are being forced into a narrow chute to conform to an occupier.

It is culturally appropriate to care for the kupuna iwi. If there are families who know those iwi, Fergestrom has no problem with the families caring for those iwi. Fergestrom would like to make the claim to unclaimed iwi because they need to go back in the ground and they are Hawaiian.

The Temple of Lono should be considered a standing cultural participant and a greater standing under religious issues because many iwi are affiliated to religious wars. They are still family and family deserve respect.

Saffrey asked if Fergestrom has applied to be a cultural descendant.

Fergestrom said no, he is trying to find out what needs to happen.

Saffrey said the rules for lineal and cultural descendants are outlined.

Fergestrom said outlined by an occupying force. They have a kuleana that goes beyond a government entity. We have people who suffer and do not get recognized by the State as lineal descendants because of the rules. This is not right and does not sit right. These problems exist and Fergestrom wants to find a way to help the situation. Nothing can continue until it is pono. Fergestrom said his kupuna Sam Lono was involved with NAGPRA and made one of the original claims to the Mokapu iwi.

Fergestrom is trying to make things pono so we can continue and flourish as a people.

Sherlock said she is hearing that the Temple of Lono is looking to be the keeper of unclaimed iwi until those iwi are claimed.

Fergestrom said it is similar to that, but does not want to wait 10 or 15 years to see if there will be a claim. If a reasonable time passes, a year maybe and nobody claims them, the Temple of Lono will claim them and take the responsibility of reburying them. Fergestrom said he is fully aware of the spiritual ramifications that come with this responsibility.

Kuali'i referred to §13-300-2, HAR which discusses the recognition of appropriate Hawaiian organizations by the HIBC. Kuali'i felt that is what Fergestrom is looking for.

Fergestrom said they are not looking to replace anyone, just to fill a gap that is there. There are failures in the system that need to be repaired. Fergestrom said he needs the HAR so he can compare them to NAGPRA.

Lindsey said the big difference between NAGPRA and the HAR is that NAGPRA process actually gives ownership to what is being claimed. The HAR requires the State to work with groups to decide final treatment, but ultimately it is still the State that decides final treatment.

Fergestrom said that is the gap that needs to be filled. There were two meetings put on by the Office of Hawaiian Relations and talked about that when NAGPRA started Hui Malama was the State's interpretation of the process. It blocked out a whole bunch of other people's concerns and input. The fault in this process needs to be repaired because the iwi need to be in the ground.

Fergestrom said he is here to help. Fergestrom also wants to help the SHPD be fully staffed and funded. It is disturbing that there is not a State archaeologist on Hawai'i Island. It is absurd,

aggravating and degrading to have to argue about things we know in our na'au are correct. The iwi kupuna are primary.

Young asked who is next in line after lineal and cultural descendants.

Lindsey said the HAR really don't establish a "pecking order" when it comes to claiming the iwi. If there are no lineal or cultural descendants, the Department determines treatment in consultation with any appropriate organizations, including the HIBC. Lindsey said the rules don't address organizations claiming iwi. There is no established checklist or process within the rules for claiming iwi.

Young asked what would happen if someone claimed iwi.

Lindsey said it is difficult to refer to the term "claim", but if an organization is willing to help rebury iwi the State would be willing to consider that assistance.

Fergstrom said internationally, if ancient bones are discovered that are associated with a particular religion, they are returned to that religion for processing.

Nakoa expressed concerns regarding iwi at Pohakuloa.

Lindsey said the Department would consider any assistance the Temple of Lono is willing to offer in terms of getting the iwi kupuna that are in curation returned to the 'aina and in protecting burials. State law does not address claiming iwi.

Young asked if the Burial Councils can claim iwi.

Lindsey said the Councils have been claimants under NAGPRA, but State law does not allow it. State law maintains the DLNR has jurisdiction of iwi over 50 years old.

Kuali'i quoted 6E-7(c) of the Hawai'i Revised Statutes.

Fergstrom said religion is part of the culture, but is also its own category. Fergstrom said the training he received from his kupuna is starting to come to life.

Young said more discussions on the matter seem to be appropriate.

Fergstrom said under the Native American Religious Freedom Act, consultations with native religious practitioners is called for. It is important that there is a clear separation between what religious practices are being talked about. Fergstrom said he practices the ancient religion. There are companion laws that support dialogue on this issue. Fergstrom said it has taken several years to get this matter on the agenda, but it is not a new idea.

Saffrey asked how many iwi are unclaimed.

Fergstrom said he does not know the exact number but has been in the SHPD's iwi room in downtown Honolulu and the whole room is shelves and kupuna iwi.

Saffrey asked if the iwi were given to the Temple of Lono, would they have the place and the capability to return the iwi.

Fergestrom said the capability yes, the place is something that would not be disclosed.

Hanoa said all of the Burial Councils should have a conference to discuss these issues.

Lindsey said the issue is that there is no “claiming” process in the current rules or statutes.

Young said to correct that we need to go into rule making and legislative action.

Lindsey said there are a few things that cause the delay in reburying iwi. Sometimes the lineal or cultural descendants have to work out among themselves what is going to happen. In other cases, the State has to prepare and record the area that is going to be used for the reburial to ensure it is protected. Establishing easements is a process that takes time and the State is required to go through that process. Community groups may not have to go through that process. The State requires a process and obviously must hold itself to that.

Kanemoto said the ethnicity of many of these unclaimed iwi has not been determined.

Fergestrom said that brings up the question of DNA testing. There has been a lot of debate on that and people say it is desecration but Hawaiians poked, probed, cleaned, scraped and everything else. The thought of DNA testing is not something Fergestrom would be opposed to as a cultural practitioner.

Kanemoto said Fergestrom needs to make his views known to the HIBC.

Fergestrom said the burials being found in unmarked graves are the Hawaiians. Fergestrom said he also has a problem with the term “inadvertent discovery”.

Hanoa said she does not agree with DNA testing.

Young said there needs to be discussion between the Burial Councils. Another option would be having a HIBC meeting with one agenda item.

Nakoa said the iwi should be left in the ground.

A motion was made to close agenda item III.H. (Elarionoff/Sherlock)

Vote: All in Favor

G. HOKUKANO AND KAALAIKI AHUPUA’A KA’U DISTRICT, HAWAI’I ISLAND TMK (3) 9-5-016:036

Information/Recommendation: Discussion of community concerns regarding burial sites on the TMK parcel and possible impacts to the burial sites by the construction of a home on the property.

Discussion of the advice and or opinions the Department has received from the Department of the Attorney General regarding this matter.

Young said the HIBC passed a motion at the September meeting to send a letter to the Department of the Attorney General regarding this matter. The letter was sent on October 11.

Kanemoto said he has seen the letter.

Hanoa said until the Attorney General responds, the matter should be deferred.

Nakoa said she knows the history of this land. A house is built on a burial. This is royal land and the heirs have been bypassed.

Sherlock said the HIBC is aware of the history of this case. Sherlock said Hanoa is the one who knows this land and the final word is with Hanoa.

Young said the HIBC hopes the letter will address Hanoa's concerns.

A motion was made to close agenda item III.G. (Elarionoff/Hanoa)

Vote: All in Favor

IV. CASE UPDATES

A. SIHP SITE 50-10-45-24851

KEA'AU AHUPUA'A, PUNA DISTRICT, HAWAII ISLAND

TMK (3) 1-6-091:054, (3) 1-6-091: multiple and (3) 1-6-090: multiple

Information/Recommendation/Determination: Discussion of the history of this site which is a lava tube where Native Hawaiian skeletal remains were inadvertently discovered. Discussion of the completion of a survey of the lava tube and the identification of affected landowners. HIBC recommendations to the Department on appropriate measures that should be taken to ensure this site is protected.

Keoni Alvarez distributed his summary of events related to this case to the HIBC. There is also a letter to Melanie Chinen. There was bulldozing that occurred and there was no treatment plan and it is all in the buffer zones right now that would be on this cave and they did not have the chance to discuss it and bulldozing happened. The summary is basically his statement of what actually occurred the week the bulldozing happened. Alvarez said they tried everything they could to prevent the desecration from happening to this burial cave.

Alvarez distributed survey maps of the lava tube within 'Ainaloa Subdivision. Alvarez distributed pictures.

Alvarez said the State did a survey and generated a map. Alvarez depicted bulldozed areas in pink on the map. Alvarez said their concern was for surface burials like they have been mentioning from the beginning before all this even happened. They did not have a chance to contact the Island Burial Council. Alvarez told Saffrey after. They did the whole process of calling the Police, calling the enforcement. They stopped it for a day, it was a holiday, but according to the bulldozer

operator, Lindsey gave the authorization to go ahead and bulldoze and recorded Lindsey saying that and that is why Alvarez is going with what he said.

Alvarez said basically the burial site is at the top, 300 feet in but they did not have a chance to protect the whole burial site which is the cave. They went into the lot, they did find fragments the first day they went into there they found another burial site. Alvarez did not know they were far away from the known burials and told Lindsey that if they were human bones because he picked them up. That was his fear of going in there because like he said at the last meeting he did not want to step on bones because that is desecration. The first time this was discovered 17 years ago and it was not flagged, three people went in the cave. In and out that is six times. Four more people went in and out when Lindsey did not bring the proper gear. That is eight times. Then they had to do two more times to do the surveying which was five people so that is ten more times. If you add that up that is 34 times that they had to walk back and forth in the cave. That was Alvarez's biggest thing about stepping on bones and that is what he did not want to happen.

Alvarez said this is a desecration because they are bulldozing where the buffers would be. They did not have a discussion about protecting the cave. We are talking about the iwi but did not have a hearing to get the HIBC's opinion on making this burial site a part of the cave.

Aileen Alvarez (A. Alvarez) said the opening to the cave is a part of the burial.

Alvarez said the opening to where the iwi are at, it is a fact, custom and a practice that nobody disagrees with. Alvarez has never met anybody who disagrees that the cave is not part of the burial site and he has interviewed a lot of people and he went out to the public to try and get help financially to preserve this burial site. That is the only way to preserve this site.

When they bulldoze without buffers or a treatment plan or without consulting the HIBC first, all this happened. Now the cave is open. The bulldozer operator said he went into this cave to look and that is another desecration. Alvarez said he has pictures and video footage too. He does not have the D-9 footage because the Channel 9 news did a story and have his footage.

There were two bulldozers that came. One was a D-9 or a little smaller and the other was a cesspool which is what is being shown in the pictures. It is really sick that this happened.

A. Alvarez said this happened without making the buffer zones and Lindsey is letting them bulldoze. It is really a sad situation because now the cave is open to look inside.

Alvarez said Melanie Chinen gave the opinion. Right after she gave that opinion is when the bulldozer started. Chinen said the entire cave is not part of the burial. The bulldozing that occurred, the operator said Lindsey gave him the ok to do what he did.

A. Alvarez said the police enforcement said Lindsey gave the go ahead.

Lindsey said the bulldozing work occurred on a property owned by the Gubars and identified as TMK 3-1-6-90:104 and depicted as lot 49 on the map Alvarez distributed. According to the survey that was done, the lava tube is not beneath that parcel and there was no reason for the SHPD to order or request work on that parcel to stop. Lindsey said that it is not him giving the ok, it is that the SHPD had no reason to request or order that work to stop.

Young said in July 2006 a survey of the tube had not taken place. The map Alvarez distributed depicts the lava tube and the lots. The pink areas are bulldozed. The dotted line which depicts the boundaries of the lava tube. The lava tube is not under the Gubars property.

Lindsey said it is his understanding the Gubars property, depicted as lot 49 on the map is not above the lava tube.

Alvarez said if there was a buffer zone, it would be on the Gubars property.

Young said lot 48 on the map is also in pink.

Alvarez said that lot was bulldozed. Once the Gubars got the go ahead, the next landowner decided to do the same thing. Alvarez said he talked to the operator and explained the situation.

Lindsey said he was not aware of the activity on lot 48.

Alvarez said what happened was that they called the enforcement on lot 49 and it was on a holiday. The next day the enforcement called the SHPD and Lindsey was not in, so the SHPD archaeologist, Julie Taomia took it upon herself to say what Lindsey told her and said the cave does not go backwards. Alvarez knew the cave went backwards so he called Glenn Kodani, who did the mapping and he said he had just finished the map and that the cave extended 50 feet backwards and is 26 feet wide. The DLNR enforcement took Taomia's word that the cave does not go backwards so they called it off and the bulldozing continued and now they are building their house.

Lindsey said the SHPD had no reason to order or request the work to stop on the Gubars property.

Young said if the map distributed is correct, there is some distance between the edge of the cave and the Gubars property.

Alvarez said the cave actually goes further, the map is accurate but that part of the cave is a rough estimate, but Alvarez helped with the measurements.

Young said the State believed the grading on the Gubars property would not affect the cave.

Lindsey said more specifically to the burial site.

Alvarez said they wanted archaeological monitor because they didn't have chance to discuss another site they feel is a burial because they brought in ocean rocks. Alvarez said Lindsey did not even check that yet. Someone needs to be watching the bulldozer. The landowners know nothing about whether this is a burial site or not. Because they went blindly and just bulldozed it, that is desecration. They did not have a chance to look in it. Alvarez said he knows it was a burial site and if there wasn't a burial in the cave the chances of it being a burial are zero, but they know there is a burial site and the other burial site he told the HIBC about on lot 51 is their concern. They went ahead and the site got bulldozed.

A. Alvarez said the State is saying the lava tube is not the burial site and that why Lindsey gave the ok to bulldoze. The cave is only five feet away from the next property and they have their cesspool right there. That shows the he did not understand because there are no buffers and the cesspool is right there. In Hawai'i, we recognize the whole cave as the burial site. The known burials are 600

feet into the cave, but there are closer iwi that Alvarez stepped on that are not shown on the map. The cave is now open and people are going into the cave.

Alvarez said he stepped on bones and showed them to Lindsey. Alvarez did not realize how far away from the known burials they were. If rats moved the bones, you would see a trail of bones, which you don't so this is another burial under the roof fall. It would be under lot 47 on the map.

Saffrey asked if the bones were identified.

Lindsey said they are unidentifiable bone fragments in a crack in the lava tube next to an area where there is roof fall. Potentially there could be more burials under the roof fall or from the known burials.

Kuali'i asked if it was possible there were more burials under the roof fall.

Lindsey said it is possible.

Alvarez said Chinen said at the last meeting that the State is going to pick up the treatment plan to protect these burials. Chinen was trying to say that this was a six mile cave, but Alvarez is saying that it is not a six mile cave, it is 300 feet. That is why they are saying to protect the whole cave. Chinen then said every situation is different. Alvarez said Chinen said the State would establish a buffer around the burial, but Alvarez said that is not how it works.

Young asked if this site is classified as previously known or inadvertent.

Lindsey said inadvertent.

Alvarez said it is previously known. OHA agrees with that. Alvarez quoted §13-300-31 of the HAR.

Lindsey said before Alvarez went into the cave, they did not know the burials were there. At the point in time people found burials in the cave, it is an inadvertent discovery.

Alvarez asked how you identify a site based on oral or written testimony.

Lindsey said that is for families who have oral histories that there are graves in a specific location.

Sherlock said there are no family names for the burials.

Hanoa said this is a very old cave and very old burials.

Alvarez asked why archaeological inventory surveys can identify new burials that become previously identified and he cannot.

Lindsey said because that is what the rules and statutes say become previously identified. Alvarez asked why their testimony does not make the site previously identified.

Lindsey said because 17 years ago when they discovered the burials in the lava tube it was an inadvertent discovery.

Alvarez said he does not agree with that. OHA and the County Council agree with him.

Lindsey said the cannot contradict the rules and statutes.

Alvarez said he can.

Young said the matter appeared on the July 2006 agenda as an inadvertent discovery.

Alvarez said it never got settled and never really discussed the matter.

Lindsey said OHA can say that inadvertents become previously identified at some point and the County Council can agree, but the Department believes that the site is inadvertent as defined in the statutes and rules.

Alvarez said the State can define the site in two or three hundred ways.

Lindsey said there are only two ways the site can be categorized.

Alvarez said the whole cave is the burial.

Lindsey said the Department understands the cultural concerns and what the Hawaiian community believes should happen. In this particular case, through implementing the rules and statutes, it appears this entire lava tube will not be treated as the burial site.

Young said he wanted to make sure the correct TMKs are being referenced on the SHPD letter to Megan Labrador.

A. Alvarez asked why the Department is not treating the entire lava tube as the burial. A. Alvarez asked why Lindsey is changing everything now.

Alvarez said it is a proven fact.

Young said the State is not going to treat the entire lava tube as the burial.

Lindsey said at this point that is how it appears.

Young asked what the State is going to consider for protective measures for the burials.

Lindsey said the landowner of the parcel above the burials has been notified and the Department will work with them to avoid damage to the burials in the event land alteration activities begin on that parcel.

Young said he would recommend buffers outside of the cave so that no bulldozing work occurs over the cave.

Alvarez said to look at the pictures of the desecration he distributed. People know that the burial site is there and driving all these machines over the cave. Why should they wait until the future and allow these people to bulldoze and do what they want to do and the HIBC has the pictures and

Alvarez told the HIBC ahead of time. Alvarez said they aren't going to wait for the future, they are going to protect it now. There needs to be a wall around it.

A. Alvarez said the cave is supposed to be sealed.

Alvarez said they would like to see buffer zones in place, the whole cave is the burial site which needs to be protected, no buildings or structures be permitted or altered in any way on the cave path and buffer zone boundaries, all construction and bulldozing come to a complete stop until the treatment plan is in place and their court hearing, because it is going to go to court is completed. The bulldozer operator who went into and stated he went into the cave be fined \$10,000 not only them but the State for giving the ok to bulldoze and not stopping the bulldozing should be fined \$10,000 and to the areas that need to be protected is the entrance to the cave opening needs to be capped. The burial site needs to have where the entrance and the burial site needs to have a wall around it and also a monument needs to say it is a burial site and there is no building on it.

With these imaginary lines people, the State is like a child always testing the limit and they want to set the boundaries. Alvarez said he has to go out of his way and take off work and run down to see what the bulldozers are doing and it is costing his job. Alvarez said he has things he has to do, it is a very high paying job and he cannot afford to loose something like that. It is a very stressful thing that they have to go through this and they didn't have the chance to approach the HIBC. The State knew about the bulldozing and did not tell the HIBC about it.

Lindsey said there was no reason for the SHPD to request or order the work to stop on the Gubars property.

A. Alvarez said they did not talk about that because the cave is only 5 feet away from the Gubars place. They did not talk about putting buffers in place before Lindsey said to go ahead and do it. They didn't even present this to the HIBC and Lindsey went ahead and said it is ok.

Lindsey said the SHPD does not have a reason to stop the Gubars.

A. Alvarez said there is a reason, they are protesting it.

Lindsey said based on the rules and statutes, the SHPD did not have the ability to stop the work.

A. Alvarez said that needs to change.

Lindsey said his personal cultural beliefs do not enable him to change the enforcement and implementation of the rules and statutes.

A. Alvarez said that needs to change because this is a part of the burial where you go in. People cannot just go ahead and bulldoze without buffers around the entry to the cave.

Hanoa asked what the proper procedure for dealing with lava tubes and burials.

Lindsey said every case is different.

Hanoa asked why the SHPD did not bring the matter before the HIBC before giving the ok.

Lindsey said it is not a matter of the SHPD saying this is ok or that is ok, it is looking at the policies which are guided by the rules and statutes give the ability to staff to order or request the work to stop. In the case of the Gubars, when the County Police called and the DLNR enforcement called, there was no reason for the SHPD to request or order that work to stop.

Alvarez said there is a reason. When there is construction going on, you stop the construction around the area that is prone to have burial sites and that was not done here. There is a burial site in the area and everything around that area needs to be looked at. They did not have a chance to look at lot 51 where they brought in ocean rocks and Alvarez knows there are burials there. There are reasons they are bringing this up, they know there are burials and there needs to be precautions before bringing in a D-9 and bulldozing. Alvarez knows these two sites are burials and it is up to the landowners to protect it and see if there are burials and that is not Alvarez's fault, it is the State's fault. There is a process you have to go through and they went through that process. They did everything they could to stop the bulldozer and it did not stop. If Alvarez had called on lot 48 the same thing would have happened.

Lindsey said he is speaking of the work on the Gubars property, he had no idea anything happened on lot 48. Eventually we are going to get into the definition of the a burial site. Lindsey said he understands that culturally there is a big gap between what the Hawaiian community believes should happen and the State is implementing. Lindsey said he does not make policies up unilaterally. Lindsey represents the SHPD's position as an employee and his personal cultural beliefs do not enable him to change what the rules and statutes require him to do as an employee of the State of Hawai'i.

Young said this is an inadvertent and the State determines treatment in consultation with the HIBC. The State has determined that the whole cave is not the burial. The State will be working with the landowner above the known burial in the cave to establish buffers on the surface where that burial is.

Lindsey said at this point the State is not treating the entire cave as the burial site and the State will be working with the landowner above the burial.

Young asked if there is any more archaeological work scheduled within the cave because of the additional bone fragments that were found.

Lindsey said no.

Young asked if the location of the additional bone fragments is being considered a burial.

Lindsey said the SHPD would have to discuss that matter internally before he could respond.

Hanoa said it is the same thing as Hokuli'a, when you find a burial in a cave the whole cave is the burial.

Lindsey said in that case, despite protests from the Hawaiian community and some descendants the Department allowed those lava tubes to be crossed by project roads because of the State's definition of a burial site. It was the same thing at the West Hawai'i Business Park.

Young said the HIBC can make recommendations. Young said if the entire cave is not considered part of the burial, then the opening is not considered part of the burial.

Lindsey said that is a reasonable conclusion.

Young said in that case, going into the entrance of the cave is not considered a burial violation.

Alvarez said this is a lawsuit already. This is sick.

Young said the HIBC needs to make the right recommendations. The State has made some decisions and Young wants to understand the ramifications of those decisions.

Lindsey said it is possible that more discussions need to take place between the affected landowners, the State and all interested parties.

Alvarez said it is about what is right.

Kuali'i said any families of the burials in the lava tube need to be identified and that may change the classification of the burial site to previously identified.

Lindsey said there is still the definition of a burial site.

Alvarez said they are the 'ohana to these burials and they have a problem with how the site is being treated and classified.

Young said Alvarez was recognized as a cultural descendant to the burials. Young asked if Alvarez has received a response from Chinen to the two letters he distributed to the HIBC.

Alvarez said his last discussion with Chinen was about the entire cave not being considered the burial site. Chinen told him that and how they were only going to protect where the burial is at and right after she told him that is when he cut out. After all this bulldozing went on, they have to consider lot 48. Alvarez handed the survey map to the bulldozer operator and that is how he knew the State knew the work was affecting the burial because they made the map.

Young asked if Alvarez expects any of the proposals in his letter to be agreed to by the State. The letters are dated 10-17-06.

Alvarez said the 10-17-06 letter has not been sent. The letter dated 10-12-06 was sent. Chinen stated that the entire cave is not considered the burial site and that is actually going to court.

A. Alvarez asked if the State's position that the entire cave is not the burial can be appealed.

Alvarez asked if the HIBC can appeal that position.

Young said he does not know. There is a depiction of the cave, how many properties are involved, how big the cave is and we know there are burials in there. Young asked if there is any recommendation the HIBC wants to make on the State's determination on the burial and the treatment of the burial.

Kanemoto said the HIBC needs to consider the definition of a burial site in §6E-2, HRS. It is a very specific definition.

Alvarez said the burial cave is specific and they need to go by their cultural.

Kanemoto said the HIBC needs to advocate for changing the definition of a burial site to include the entire lava tube that contains the burial.

Saffrey said the HIBC has been on site inspections where the entire lava tube was protected by a buffer. Saffrey is concerned that this cave is not being treated the same.

Young asked if there are any other activities that may affect the burial.

Alvarez said the landowners do not need to pull permits and they can bulldoze in two days. The bulldozer operators don't care and they are just going to do what they are going to do. Alvarez said we can directly tell them or send them a letter. They don't have to pull a permit, these are quarter acre lots. The letter should say that this is marked as a historical site. The person who is going to bulldoze is a developer and knows he does not have to pull a permit.

Sherlock asked how the site has been determined to be historical.

Lindsey said the burials are believed to be over 50 years old based on the SHPD's examination, so they are historical.

Alvarez said all bulldozing and construction in the area needs to be stopped until we can figure this out.

Choy said this is not the only burial in Ola'a rain forest from Kea'au to Pahoa. Choy said that is his 'ohana in the cave. Put the name 'Ohi'a Ku on the cave. About a half mile from this cave there is another burial cave. A third cave is in Orhidland. All these caves have burials and moepu. There has been a lot of looting and moepu have been removed.

A. Alvarez said the cave is open and people can go in and take the iwi and sell them on ebay.

Young said it would be illegal to remove the iwi.

Kuali'i asked if the caves Choy spoke of are registered.

Choy said no.

Kuali'i encouraged registering the sites. Kuali'i said he understands that there are cultural concerns with registering the sites, but it is an effort to protect them.

Choy said Kazamura cave is also well known. There are many burials in there.

A. Alvarez asked if the HIBC is going to appeal the State's position that the entire cave is not the burial.

Young said that question needs to be addressed to the State as to why the entire cave is not considered the burial. Young asked if it would be appropriate for him to send a letter to Chinen suggesting that the State reconsider the determination and include the entire cave as the burial site.

Lindsey said the decision is based on the definition of a burial site in the statutes.

Kanemoto said the HIBC can make any recommendations relative to Native Hawaiian burial sites.

Young asked if there are any protections being afforded the opening to the cave.

Kanemoto said that invokes the cave law, Chapter 6D, HRS. The landowner is considered to own everything under his property by western law. That landowner has the legal authority to prevent people from entering the cave.

Kuali'i asked if they know who the owner of the property with the opening is.

Alvarez said they do. They want the opening capped and put something to say because they don't want people tampering with or bulldozing the cap on the opening.

Kanemoto said that would be up to the landowner.

Young said the matter needs to be on the next agenda. The matter will be on the front of the agenda.

Alvarez said he wants everything clarified by then. There needs to be a treatment plan to protect this burial site. There needs to be buffers.

A motion was made to close agenda item IV.A. (Helbush/Saffrey)

Vote: All in Favor

A motion was made to defer the remainder of the October 19, 2006 HIBC agenda. (Sherlock/Saffrey)

Vote: All in Favor

B. UNIVERSITY OF PENNSYLVANIA NAGPRA REPATRIATION

Information/Recommendation/Determination: Discussion of the HIBC response to the letter sent by the University of Pennsylvania regarding the repatriation of an iwi po'o.

C. "FORBES CAVE", KAWAIHAE, SOUTH KOHALA, HAWAI'I ISLAND

Information/Recommendation: Discussion of recent media reports indicating that items formerly in the control and possession of the Bishop Museum which had been returned to a cave in Kawaihae from which they originated from have recently been removed.

V. INADVERTENT DISCOVERIES

Information/Recommendation: Informational presentation by SHPD staff on inadvertent discoveries of skeletal remains reported to the Department in the month of June, July, August and September 2006 on the following properties.

A. TMK (3) 1-7-024:065 and 1-7-024:28 Ola'a, Puna District, Hawai'i Island

B. TMK (3) 6-5-004:071 Waimea, Kohala District, Hawai'i Island

C. TMK (3) 7-3-009:003, 014 Kohanaiki Ahupua'a, Kona District, Hawai'i Island

D. TMK (3) 7-2-004 Kuki'o Ahupua'a, Kona District, Hawai'i Island

VI. ANNOUNCEMENTS

VII. ADJOURNMENT

The HIBC meeting was adjourned at 4:15 p.m.